

EPA Plan to Follow-Up on the Mitigation Actions Outlined in Final EIS Documents

Introduction:

On August 22, 2013, the Inspector General of the U.S. Environmental Protection Agency (EPA), issued a report whose purpose was to determine the impact the EPA has on federal agency Environmental Impact Statements (EISs) prepared under the National Environmental Policy Act (NEPA). It contained findings that EPA was successful in providing substantive comments on EISs that raised mitigation measures to protect the environment. The report also recommended certain follow-up activities on final EISs, including contacting lead agencies and documenting the results of these reviews. As set forth below, EPA puts forth a plan to accomplish these recommendations.

Background:

NEPA focuses on mitigation and requires lead federal agencies or other consenting agencies to include mitigation in federal actions if the conditions are established in an EIS and committed as part of the final decision. This can be done, for example, by conditioning a grant, a permit, or other approval with mitigation measures.¹ A lead federal agency must state in the Record of Decision whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. If such practicable means are not adopted, the agency must set forth the reason why.² A cooperating agency with jurisdiction by law that objects to or expresses reservations about the project's environmental impacts must specify the mitigation measures it considers necessary to allow the federal agency to go forward with the project.³

In addition, EPA also has the ability to recommend mitigation measures under its Clean Air Act Authority to review and comment publicly on the environmental impacts of major federal actions.⁴ As set out specifically in its guidance, *Policy and Procedures for the Review of Federal Actions Impacting the Environment* (1984), EPA is guided to include measures to avoid or minimize damage to the environment, or to protect, restore, and enhance the environment. Also, it is EPA's policy to conduct, on a selected basis, follow-up activities on comments on final EISs.

Actions to Be Taken:

In response to the Inspector General's recommendation, EPA will conduct, on a selected basis, follow-up activities on EPA's proposed mitigation measures adopted by agencies in the final EISs, including contacting lead agencies and documenting the results of these reviews.

Frequency of Follow-up Activities:

The frequency of the follow-up will vary based on the workload of each EPA Region, but at a minimum, Regions will follow-up on at least one project per fiscal year. This recognizes the limited resources that the Regions have to take on additional work, but still commits to take on the follow-up to the Inspector General's Recommendation.

¹ 40 C.F.R. § 1505.3.

² 40 C.F.R. § 1505.2(c).

³ 40 C.F.R. § 1503.3(d).

Factors to Consider:

The Regions will consider a number of factors in choosing projects for follow-up activities, including:

- if the Draft EIS for the project received an adverse rating from EPA;
- if the Lead Agency committed to a significant amount of mitigation based on EPA recommendations;
- if the project or mitigation is precedent-setting; or
- If the Lead Agency committed to mitigation for impacts that relate to EPA priorities, including climate change environmental justice, or childrens' health.

Correspondence and Documentation:

Regions will contact the lead agencies on the selected project to follow-up on the mitigation outlined in the Final EIS with the lead Agency to find out if this mitigation has been implemented.

After receiving a response, the Region will maintain a copy of the information and also provide the information to the Office of Federal Activities (OFA). OFA will maintain a central collection of the records and track the follow-up activities.